

June 13, 2022

**Via ECF**

Honorable Lorna G. Schofield  
 U.S. District Court  
 Southern District of New York  
 Thurgood Marshall Courthouse  
 40 Foley Square  
 New York, NY 10007

Re: *In re Foreign Exchange Benchmark Rates Antitrust Litigation*  
 Case No. 1:13-cv-07789-LGS

Dear Judge Schofield:

Plaintiffs write to provide supplemental authority for their opposition to Credit Suisse's motion to decertify. *In re Broiler Chicken Antitrust Litig.*, 16-cv-08637, ECF No. 5644 (N.D. Ill. May 27, 2022) (Ex. A) ("*Broiler*"), concerned an alleged price-fixing conspiracy in the market for broiler chickens. The court certified three Rule 23(b)(3) classes: a direct purchaser class, an indirect purchaser class, and an end-user consumer class.

*Broiler* reiterates the settled rule that the existence of a price-fixing conspiracy and defendants' participation therein is a common question that can and should be answered for all class members in a single trial. "[T]his 'type of alleged conspiracy is the prototypical example of an issue where common questions predominate, because it is much more efficient to have a single trial on the alleged conspiracy rather than thousands of identical trials all alleging identical conspiracies based on identical evidence.'" *Broiler* at 15 (quoting *Kleen Prods. LLC v. Int'l Paper*, 306 F.R.D. 585, 594 (N.D. Ill. 2015)).

In *Broiler*, the end-user class, with some exceptions, comprised all persons who indirectly purchased raw chicken from the defendants or their co-conspirators for personal consumption.<sup>1</sup> The *Broiler* court certified the end-user class under Rule 23(b)(3) recognizing there was no common proof of class membership.<sup>2</sup> Like Credit Suisse, the *Broiler* defendants argued that the end-user class was "so large and unmanageable that the Court will be unable to actually 'ascertain' the injured individuals *who qualify under the class definition without 'multiple individualized inquiries.'*" *Id.* (emphasis added). The *Broiler* court rejected defendants' argument that "Plaintiffs are required to demonstrate 'that there is a reliable and administratively feasible way to identify all who fall within the class definition.'" *Id.* (quoting *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 657 (7th Cir. 2015)). Notably, the Second Circuit had previously cited *Mullins* when it

---

<sup>1</sup> The end-users defined their class as: "All persons and entities who indirectly purchased the following types [of] raw chicken, whether fresh or frozen: whole birds (with or without giblets), whole cut-up birds purchased within a package, breast cuts or tenderloin cuts, but excluding chicken that is marketed as halal, kosher, free range, organic, diced, minced, ground, seasoned, flavored or breaded – from defendants or co-conspirators for personal consumption in the Repealer Jurisdictions from January 1, 2012 to July 31, 2019." *Broiler* at 4.

<sup>2</sup> The *Broiler* court found that "the potential that the Court will be forced to identify class members 'by affidavits from the putative class members' . . . is not a basis to deny certification." *Id.* at 54 (citation omitted).

declined to impose a heightened ascertainability requirement. *In re Petrobras Securities*, 862 F.3d 250, 265, 268 (2d Cir. 2017).<sup>3</sup>

Respectfully submitted,

SCOTT+SCOTT ATTORNEYS  
AT LAW LLP

HAUSFELD LLP

s/ Christopher M. Burke

Christopher M. Burke  
600 W. Broadway, Suite 3300  
San Diego, CA 92101  
Telephone: 619-233-4565  
cburke@scott-scott.com

s/ Michael D. Hausfeld

Michael D. Hausfeld  
888 16th Street NW, Suite 300  
Washington, DC 20006  
Telephone: 202-540-7200  
mhausfeld@hausfeld.com

*Attorneys for Plaintiffs*

---

<sup>3</sup> Both the Seventh and Second Circuits rejected *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 594 (3d Cir. 2012), the Third Circuit case upon which Credit Suisse relies. *Mullins*, 795 F.3d at 661-62; *Petrobras*, 862 F.3d at 265.